

LELAND W. WISCOMBE  
DUDLEY L. DAVIS

IBLA 81-767

Decided August 25, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 30343 through CA MC 30346, CA MC 30349, and CA MC 30350.

Reversed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Where the case records of unpatented mining claims located prior to Oct. 21, 1976, disclose that prior to Oct. 22, 1979, both copies of notices of location and proofs of assessment work were filed with the proper office of the Bureau of Land Management, it is not proper to declare the claims abandoned and void because the evidence of assessment work was filed prior to the filing of the copies of the notices of location.

APPEARANCES: W. Scott Donaldson, Esq., for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Leland W. Wiscombe and Dudley L. Davis appeal the May 18, 1981, decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented Calico Tailings Dump; Ladybird #1, #2, #3; Ladybird #1-#2-#3-#4 Association; and Barbara placer mining claims, CA MC 30343 through CA MC 30346, CA MC 30349, and CA MC 30350, abandoned and void because no evidence of assessment work was filed on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. The claims had been located prior to October 21, 1976.

Appellants allege that they tried to comply with the requirements of 43 CFR 3833.2-1 in that they did submit proof of labor for the claims to the Riverside District Office, BLM, in May 1979. The instruments

were forwarded to the California State Office and were date stamped as being received by BLM May 10, 1979. Thereafter, BLM returned the documents and service fee by letter of May 15, 1979, advising appellants that FLPMA required them to file copies of the notices of location and ancillary information to enable location of the claims on the ground, and a service fee of \$5 per claim. The notice of location and service fees were submitted to BLM July 30, 1979, at which time serial numbers CA MC 30343 through CA MC 30350 were assigned. Appellants did not resubmit the proofs of labor. They now request reversal of the BLM decision because of their good faith effort to comply. Additionally, appellants state that applications for mineral patent have been filed for the subject claims.

Section 314 of FLPMA contains the statutory requirements for recordation of unpatented mining claims. Subsection (a) discusses annual assessment work; subsection (b) discusses notices of location. The regulations reverse the order, with 43 CFR 3833.1 relating to the notice of location, and 3833.2 relating to annual assessment work. The regulations also require the proof of labor to be identified by serial numbers assigned to the claim.

It is noted that the BLM letter of May 15, 1979, returning the proofs of labor and the service fees, advised the claimants only that the notices of location were required, together with appropriate service fees of \$5 per claim. No mention was made of the proofs of labor. From this it was not unreasonable for the claimants to assume that they had satisfied the statutory requirements for recording the proofs of labor for these claims.

Accordingly, in the unique circumstances of this case, we are constrained to hold that the claimants did satisfy the recordation requirements of FLPMA set forth in section 314 in a timely, if unorthodox, manner.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed, and the case remanded to BLM for appropriate action consistent herewith.

Douglas E. Henriques  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Bruce R. Harris  
Administrative Judge

